IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 238 OF 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MITHIBEN D/O.GOVANBHAI CHHIBABHAI & ORS. - Appellant(s)
Versus
BABUBHAI GOVINDBHAI - Respondent(s)

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Appearance :
MR. R.N. SHAH, learned Counsel for Appellant(s) : 1 - 3.
MR. AMRISH PANDYA, learned Counsel under the authority of MR. D.R. BHATT for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/09/2006

ORAL JUDGMENT

The appeal has been admitted for hearing the parties on the following substantial question of law:

"In view of the finding of fact that Mithiben (deft. No.1) had a right of residence for her

life time in the suit property originally belonging to her father Govanbhai, who died in 1944, whether her right to residence & possession is enlarged & made absolute u/s. 14 of the Hindu Succession Act? If that is the only property left by the deceased, would son or other heir be totally excluded from inheriting?

2. The plaintiff-respondent, Babubhai Govindbhai, who is the real brother of appellant No.1, Mithiben, had filed Regular Civil Suit No.174 of 1979 and Regular Civil Suit No.295 of 1979, seeking possession of the suit property, which happens to be a room in possession of the appellant-defendant No.1 on the ground that she had no right to live in the property. The defendant No.1, Mithiben, undisputedly, is in occupation of the property with her daughter, Ramilaben, defendant no.2, and Ramilaben's husband - Bhagubhai Jinabhai, defendant No.3.

2.1 The suits were decreed, therefore, the defendants filed Regular Civil Appeal Nos.54 of 1983 and 58 of 1983, which came to be finally disposed of by the learned District Judge, Valsad (at Navsari) *vide* his judgement dated 15th January, 1985. The learned first Appellate Court maintained the decree granted in both the suits, but, however, modified the decree granted in Regular Civil Suit No.174 of 1979 (Regular Civil Appeal

No.54 of 1983) with a direction that the original defendant No.1-Mithiben would be entitled to reside in the said property so long as she survives, but, immediately after her death, the other two defendants, that is, daughter and son in law, will have to vacate the premises.

2.2 Being aggrieved by the order of eviction, the appellants have filed this appeal, which has been admitted for hearing on the above referred substantial question of law.

3. The question as framed by this Court presupposes a fact in favour of Mithiben that she was given right to live in the property prior to 1956 and that right was a limited right which would culminate into an absolute right after coming into force of the Hindu Succession Act or on death of the father. Section-14 of the Hindu Succession Act would apply to a case where a Hindu woman is in possession of the property in her own rights even as a limited owner, and in case, all conditions are satisfied, then, the said limited right would convert into an absolute right in favour of such Hindu woman. In the present case, undisputedly, the father was alive even after coming into force of the Hindu Succession Act. From the facts, it would clearly

appear that the father did not grant any permission in favour of defendant No.1, who claimed to be the deserted woman, to live in the said house.

If the property came into ownership of the plaintiff, then, obviously, the said plaintiff would be entitled to a decree for possession.

4. The question on which the appeal has been admitted has to be answered against the interest of the appellants. It is, accordingly, answered. The appeal deserves to and is, accordingly, dismissed with no order as to costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**